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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,137	01/25/2006	Leif Andersson	15090NP	3586

293 7590 12/12/2006

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EXAMINER
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COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/535,137	<b>Applicant(s)</b> ANDERSSON ET AL.	
	<b>Examiner</b> Charles E. Cooley	<b>Art Unit</b> 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-13 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20050517</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **NON-FINAL OFFICE ACTION**

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

### ***Priority***

2. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

### ***Information Disclosure Statement***

3. Note the attached PTO-1449 form submitted with the Information Disclosure Statement filed 17 MAY 2005.

### ***Drawings***

4. The drawings are objected to for the reasons on the attached PTO-948 form.

5. The drawings are objected to under 37 CFR § 1.83(a) since the drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the features canceled from the claims. No new matter should be entered.

a. the subject matter of claim 7.

6. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

#### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

##### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

##### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

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### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### ***Specification***

7. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
8. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required. Legal phraseology such as "means" must not appear in the substitute abstract.
9. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Objections***

10. Claim 12 is objected to because of improper dependency - it appears it should depend from claim 11 since "the ambient gas" is first set forth in claim 11.

Correction is required.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**12. Claims 1-9, 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Pickels et al. (US 2,878,992).**

The patent to Pickels et al. discloses as seen below a device for centrifuging including rotor means 32 with thermal treating means for thermally treating centrifuging reaction vessels 89 containing samples in a thermocycling device; the rotor means 32 comprises at least one fan blade 71 and/or 83 which force ambient gas to through the rotor means and pass the samples; at least one gas conducting passage 69 is arranged in the rotor means 32; wherein the rotor means 32 comprises a base portion (above 82) and a lid portion 86, 87, in between which an inner space 69 is formed wherein the fan blades 71 and/or 83 are arranged; the lower region of the rotor means 32 is provided with at least one through hole (above 82); the upper region of the rotor means 32 is provided with at least one through hole 87; the fan blades 71 are arranged at the inside of the base portion of the rotor means 32; wherein the fan blades 71 are arranged at the inside of the lid portion 86, 87 of the rotor means 32; a plate 86; the gas is ambient air (col. 3, lines 41-49).

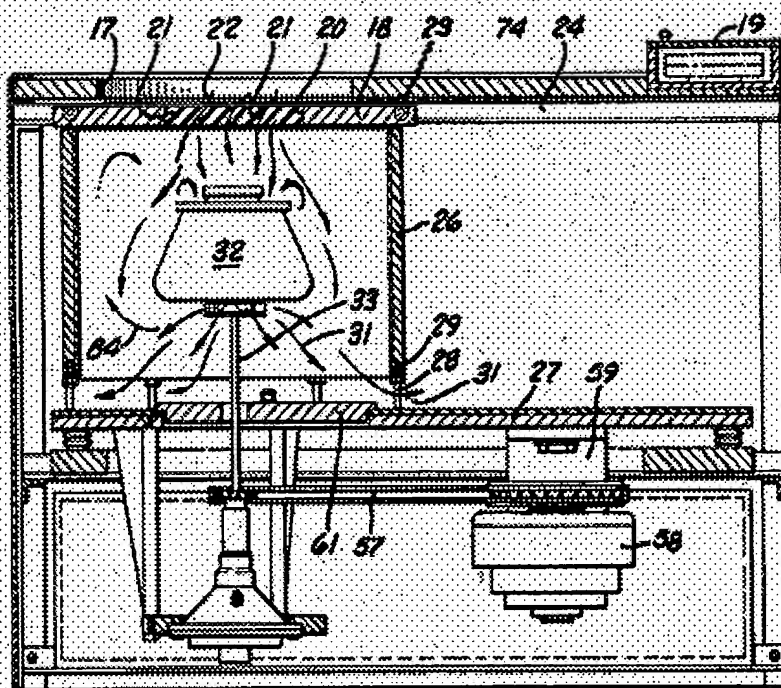


FIG. 3

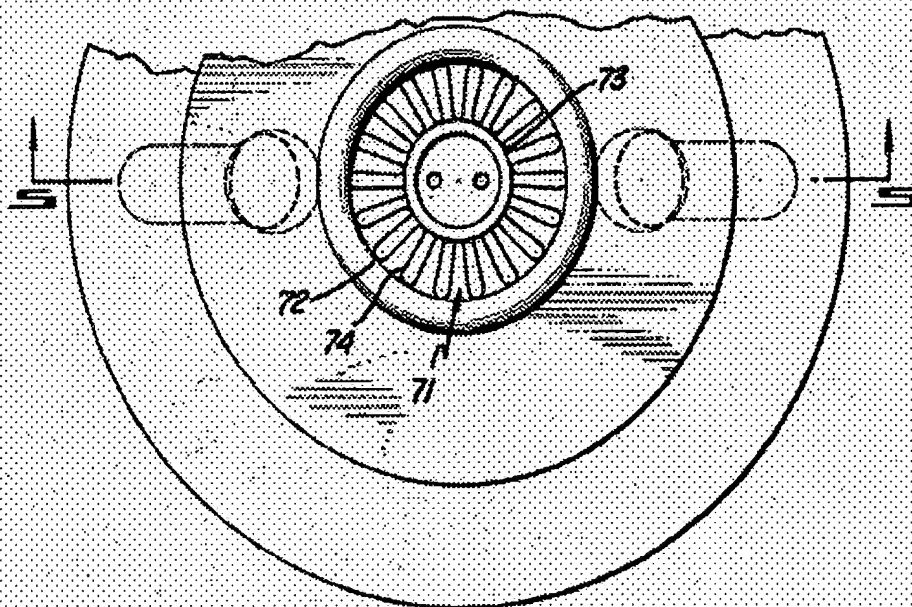
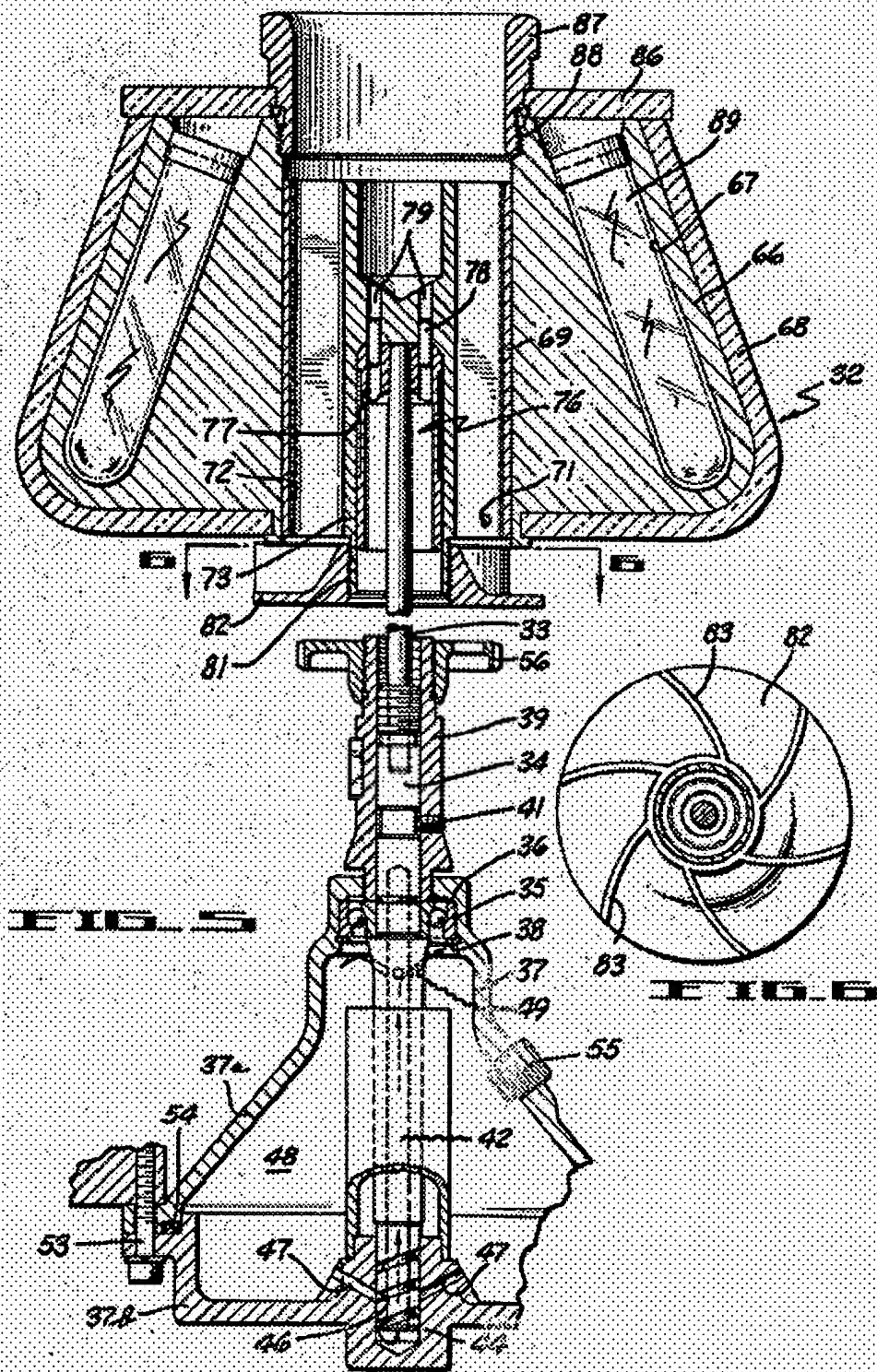


FIG. 4





Regarding the "adapted for" language in claim 1 and the claim language regarding the microtitre plate, according to MPEP 2106, the subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) **"adapted to" or "adapted for" clauses,**
- (C) "wherein" clauses, or
- (D) "whereby" clauses.

This list of examples is not intended to be exhaustive (emphasis added).

Although it is well settled that that the recitation that an element is "adapted to" (or "adapted for" in this instance) perform or is "capable of" performing a function is not a positive limitation but only requires the ability to so perform, the rotor means of Pickels et al. is deemed capable of or could be readily adapted for holding and centrifuging different forms of sample receptacles, including sample tubes or microtitre plates. Although the microtitre plate language of the claims is not considered positive limitations of the claims, note the cited WO 00/58013 teaches the equivalence between sample tubes and microtitre plates for use as sample receptacles 2 in a centrifuge having a

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rotor 1 (see page 10, first paragraph) and thus the use of alternative sample vessels such as tubes or microtitre plates is deemed obvious to one skilled in the centrifuging art.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**15. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pickels et al. (US 2,878,992) in view of Kubota (US 4,193,536).**

Pickels et al. (US 2,878,992) does not disclose the cooling means. The patent to Kubota discloses a centrifuge with a rotor means 21 for centrifuging samples 24 in a

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housing 11. Embodiments utilizing ambient air as a cooling gas are depicted in Figs. 1-6, however, the embodiment of Fig. 7 teaches that the gas may be passed through a cooling means 85 and introduced into the centrifuge for cooling purposes. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the centrifuge of Pickels et al. (US 2,878,992) with a cooling means for the gas for the purposes of employing gas other than air (such as inert gas) or to reduce the temperature of the centrifuge to lower than that of the ambient air/room temperature and to lower the noise emissions from the centrifuge (col. 2, lines 43-49 and col. 8, lines 3-37).

#### ***Allowable Subject Matter***

16. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

The prior art of record does not teach or fairly suggest the recited screen and the locating thereof or the plate indentations.

#### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses centrifuges with cooling and/or heating means.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Charles", followed by a long, horizontal, wavy line.

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

7 December 2006